

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

THE DUWAMISH TRIBE, *et al.*,

Plaintiffs,

v.

DEB HAALAND, *et al.*,

Defendants.

Case No. 22-cv-00633-JNW

**MOTION TO FILE OVERLENGTH
BRIEFS ON SUMMARY JUDGMENT**

NOTE ON MOTION CALENDAR:
October 25, 2023

I. INTRODUCTION

Under LCR 7(f), the Duwamish Tribe respectfully moves the Court to file overlength briefs on summary judgment: 70-page motions for summary judgment (“MSJ”) and 30-page response/reply briefs (100 pages total, per party).

Expanded page limits are necessary because this case, which is fundamental to the future of the Duwamish Tribe, will be decided on summary judgment. *See* Dkt. # 25. Further, this case involves complex constitutional and tribal law issues, a long history, and a voluminous administrative record.

The parties have met and conferred regarding the Tribe’s request for additional pages. *See* Declaration of Shelby Stoner, Exs. A-B (parties repeatedly conferred from October 11, 2022,

PLAINTIFFS’ MOTION TO FILE OVERLENGTH BRIEFS
ON SUMMARY JUDGMENT - 1
CASE NO. 22-CV-00633-JNW

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through August 29, 2023). Defendants do not agree to the Tribe's request for 100 pages total, asserting each party needs only 74 pages total.

II. ARGUMENT

First, the Tribe's requested page limits are consistent with the number of pages filed on summary judgment in the prior litigation, *Hansen v. Kempthorne*, No. 08-cv-00717-JCC (W.D. Wash.), as the following table shows:

	<i>Hansen Litigation Pages</i>	<i>Defendants' Proposed Pages</i>	<i>Plaintiffs' Proposed Pages</i>
Plaintiffs' MSJ	68 ¹	50	<u>70</u>
Defendants' Cross-MSJ/Response	50	50	<u>70</u>
Plaintiffs' Response/Reply	18	24	<u>30</u>
Defendants' Reply	26	24	<u>30</u>
Total (per party)	86 (Plaintiffs) 76 (Defendants)	74	<u>100</u>

Back then, Defendants *stipulated* to these extended page limits, agreeing:

- “The issues in this case are complex and the administrative record is voluminous.”
- “[I]nstead of filing two separate [MSJs] of 24 pages” and separate responses (24 pages) and replies (12 pages), i.e., 60 pages total per party, “the parties intend to file a single combined brief each.”
- “While the parties have diligently attempted to keep within previously allowed briefing limits, the parties wish to be as helpful to the Court as possible by covering all issues in sufficient depth.”

Dkt. # 72, 1-2 (No. 08-cv-00717-JCC). The Court granted the stipulation. Dkt. # 73 (No. 08-cv-00717-JCC). Today, the legal issues are even more complex; the administrative record is more

¹ In *Hansen*, the Tribe filed two MSJs addressing three claims total. Dkt. ## 68, 96 (No. 08-cv-00717).

1 voluminous (43,447 pages of documents), as the Court ordered Defendants to supplement it, *see*
 2 Dkt. # 48; the parties agree to file combined MSJ briefs (two briefs per party, not three), *see* Dkt.
 3 # 25; and the Tribe has diligently attempted to keep within LCR 7(e)(3)’s page limits, but the
 4 complex nature of the claims requires more.

5 ***Second***, here, the Tribe asks the Court to resolve *five* claims on summary judgment,
 6 brought under the Constitution and the Administrative Procedure Act (“APA”). These five
 7 claims—including claims for mandamus and declaratory relief and alternatively for equal
 8 protection, due process, and APA violations—involve distinct facts and legal frameworks. Dkt.
 9 # 2, ¶¶ 88-141. In *Hansen*, the Tribe asked the Court to resolve only three claims on summary
 10 judgment and Defendants agreed to *76 pages* to address those *three* claims. Now there are *five*
 11 claims to address.
 12

13 ***Third***, the stakes in this litigation are high, as this Court previously recognized. Dkt. # 105,
 14 16 (No. 08-cv-00717-JCC) (acknowledging the Tribe, in 2013, had waited “more than twenty
 15 years for a decision as significant as whether their group qualifies for federal acknowledgement as
 16 an Indian Tribe”). At the heart of the Tribe’s claims is the prior federal acknowledgment of the
 17 Tribe beginning in 1855, when the government entered into a Treaty with the Tribe, through
 18 modern times. *See* Dkt. # 2, ¶¶ 1-51. During that 150-year period, the Tribe was repeatedly
 19 recognized through dozens of Acts of Congress and three U.S. court decisions, among other acts.
 20 *Id.* ¶¶ 37-52. Beginning in the 1990s, however, Defendants arbitrarily decided they no longer
 21 needed to recognize the Tribe—despite the prior treaty and other promises made to the Tribe. *Id.*
 22 ¶¶ 53-67.
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 24
 25
 26

The requested page limits on summary judgment are necessary to explain why Defendants' recent refusal to recognize the Tribe violates its constitutional and statutory rights. The Tribe's existence is at stake.

III. CONCLUSION

The Tribe respectfully requests leave to file 100 pages total, per party, for summary judgment briefing.

DATED this 25th day of October, 2023.

Respectfully Submitted,

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By: /s/ Shelby R. Stoner

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I certify that this memorandum contains 673 words, in compliance with LCR 7(f)(2).